

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Southwestern Electric Power Company

Docket No. ER05-1207-000 and
ER05-1207-001

ORDER ACCEPTING AND SUSPENDING PROPOSED TARIFF AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued October 6, 2005)

1. In this order, we accept for filing Southwestern Electric Power Company's (SWEPCO) triennial revision of its rates for transmission services (Triennial Rate Revision) to Arkansas Electric Cooperative Corporation (Arkansas Coop) for the period from July 1, 2005 to December 31, 2007, and suspend it for a nominal period, to become effective July 1, 2005, as requested, subject to refund. We also establish hearing and settlement judge procedures.

Background

2. SWEPCO filed the Triennial Rate Revision on July 11, 2005 (Docket No. ER05-1207-000). On August 16, 2005, it filed revised, slightly lower rates to correct a mistake in its previous application of the formula rate (Docket No. ER05-1207-001).

3. Arkansas Coop is a power supply cooperative that is owned by various electric distribution cooperatives. It supplies capacity and electric energy to its customers from various sources, including its share of generation from the Flint Creek Power Plant (Flint Creek), which Arkansas Coop and SWEPCO jointly own.¹

4. In 1978, the Commission accepted the Flint Creek Power Coordination, Interchange and Transmission Service Agreement (Agreement) (Rate Schedule FERC

¹ July 11, 2005 Transmittal Letter at 1.

No. 72) between Arkansas Coop and SWEPCO.² Under the Agreement, SWEPCO delivers electric energy to Arkansas Coop members using a formula rate in the Agreement.

5. Article IV, section 4 of the Agreement provides that SWEPCO shall recalculate, at the end of each three-year contract period, the rates that apply to the transmission service that SWEPCO provides to Arkansas Coop for the next three years. The Agreement provides for a fixed transmission rate for service at 115 kV and greater and another fixed transmission rate for service at 69 kV or less. The two rates reflect application of the formula in the Agreement to a test year ending December 31 of the calendar year preceding the year in which the revised rates are to take effect.³

6. Effective January 1, 2008, the Agreement will terminate and, thereafter, Arkansas Coop will take transmission service under Southwest Power Pool, Inc.'s (SPP) open access transmission tariff, in place of the transmission service that SWEPCO currently provides. Accordingly, the transmission rates here will be effective only from July 1, 2005 through December 31, 2007.⁴

7. SWEPCO states that it has amended the formula in Exhibit B to provide for a transmission service revenue credit for non-firm transmission revenues that SWEPCO receives and that it has included costs for construction work in progress (CWIP).⁵ SWEPCO proposes rates of: (a) \$1.1802 per kW for service at 115 kV and greater; and (b) \$1.4932 per kW for service at 69 kV and less. SWEPCO calculates that the proposed rates will increase revenues from Arkansas Coop for the twelve months ending June 30, 2006 by \$2,191,675.⁶

² In *Southwestern Electric Power Company*, Docket No. ER02-2313-001 (unpublished Letter Order), the Commission accepted a Restated and Amended Agreement in an uncontested settlement agreement in which SWEPCO and Arkansas Coop agreed to amend the formula to provide transmission service revenue credits for non-firm transmission service revenues that SWEPCO receives. The Commission accepted the original agreement in Docket No. ER79-45-000 (unpublished Letter Order).

³ July 11, 2005 Transmittal Letter at 2.

⁴ *Id.*

⁵ *Id.* at 2-4.

⁶ Transmittal Letter dated August 16, 2005 at 2.

8. SWEPCO seeks a waiver of the Commission's prior notice requirement to allow an effective date of July 1, 2005.⁷ It notes that the proposed rate change is required by the Agreement.

Notice of Filing and Responsive Pleadings

9. Notice of SWEPCO's filing was published in the *Federal Register*, 70 Fed. Reg. 42,051 (2005), 70 Fed. Reg. 50,313 (2005), with interventions and protests due on or before September 6, 2005. On August 1, 2005, Arkansas Coop filed a motion to intervene and a protest. On August 16, 2005 SWEPCO filed an answer to Arkansas Coop's protest.

Discussion

Procedural Matter

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), Arkansas Coop's timely, unopposed motion to intervene serves to make it a party to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibit an answer to a protest unless ordered by the decisional authority. We will accept SWEPCO's answer because it has provided information that assisted us in our decision-making process.

Arguments Raised by Intervenor

11. Arkansas Coop asserts that SWEPCO's rate filing proposes substantial increases in rates compared to the prior three-year contract (2001-2004) and that SWEPCO has either inappropriately included items as transmission costs or has not adequately justified their inclusion.

12. Arkansas Coop contends that SWEPCO: (1) has inappropriately included retail and regulatory expenses in the transmission function; (2) has included industry association dues and Associated Business Development and Business Process Improvements in Administrative & General Expense; (3) is not using the Commission-required rate base;⁸ (4) has not justified changing the methodology used to calculate its

⁷ July 11, 2005 Transmittal Letter at 4; August 16 2005 Transmittal Letter at 2.

⁸ Among other things, Arkansas Coop objects to SWEPCO's using end-of-year 2004 transmission plant balances instead of the Commission-required 13-month average balances. Protest at 5.

system load at generation; (5) has not justified the increase in intangible plant and decrease in general plant-related cost; (6) has included unexplained increases in working capital; (8) has not explained its adjustment for funds used during construction; (7) has not justified increases to common transmission demand-related expenses; (9) has not adequately explained the basis for the changes in costs that affect the allocation factors, *e.g.*, salaries and wages expense changes; and (10) has not supported its requested 11.10 percent return on equity in its cost of capital.⁹

13. Arkansas Coop asserts that the rates as proposed, if calculated on an annual basis, would be an increase of nearly nine percent per year.¹⁰ It raises no issues with the formula itself, but asserts that SWEPCO has not adequately supported its proposed rate increase. Arkansas Coop argues that the concerns it raises warrant further investigation and requests that the Commission suspend the proposed rate increase, set it for hearing, and hold the hearing in abeyance while the parties attempt to settle under the guidance of a settlement judge.

SWEPCO's Answer

14. SWEPCO states that the test year component most responsible for the increase in the cost of service is the increase in transmission plant. SWEPCO states that the increase is not out of the ordinary, and that utilities install transmission facilities for several reasons, among them: (a) to meet projected demand; (b) to ensure reliability; and (c) to connect new generation. SWEPCO also says that it has installed transmission facilities to meet current and anticipated requests from the SPP, which, as of January 1, 2008, will succeed SWEPCO as the provider of transmission service for Arkansas Coop.¹¹

15. SWEPCO defends its use of end of test year 2004 transmission plant balances rather than the Commission-required 13-month average plant balances. SWEPCO maintains that the end-of-test-year plant balance is more current and, therefore, a more appropriate amount to use in this particular situation where, the rates, by contract, do not go into effect until six months after the end of the test year and then remain fixed for three years.¹²

⁹ Protest at 4-9.

¹⁰ *Id.* at 3-4.

¹¹ Answer at 1-3.

¹² Answer at 6.

16. Finally, SWEPCO argues that its requested 11 percent return on equity is not excessive, is needed to encourage the expansion of transmission plant, and places Arkansas Coop on the same footing as SWEPCO's other wholesale transmission customers.¹³

Hearing and Settlement Judge Procedures

17. We find that Arkansas Coop has raised material issues of fact that we cannot resolve based on the evidence before us and that are more appropriately addressed in the hearing and settlement procedures ordered below. Our preliminary analysis indicates that SWEPCO's proposed tariff has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept the proposed tariff for filing, suspend it for a nominal period, make it effective July 1, 2005, as requested, subject to refund, and set it for hearing and settlement judge procedures.¹⁴

18. While we are setting this matter for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.¹⁵ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.¹⁶ The settlement judge shall report to the Chief Judge and to the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

¹³ Answer at 7.

¹⁴ *Id.* at 9.

¹⁵ 18 C.F.R. § 385.603 (2005).

¹⁶ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of the date of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

Prior Notice

19. As SWEPCO explains, the Agreement provides for new rates to come into effect after each three-year period. Accordingly, we will grant waiver of the 60-day prior notice requirement to allow the proposed rate changes to become effective July 1, 2005.¹⁷

The Commission orders:

(A) SWEPCO's request for waiver of the Commission's prior notice requirement is hereby granted.

(B) SWEPCO's proposed rate changes are hereby accepted for filing and suspended for a nominal period, to become effective on July 1, 2005, subject to refund, as discussed in the body of this order.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held in Docket No. ER05-1207-000 concerning the justness and reasonableness of SWEPCO's proposed rate changes, as discussed in the body of this order. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (D) and (E) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2005), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(E) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement

¹⁷ See *Central Hudson Gas & Electric Corporation*, 60 FERC ¶ 61,106, order on reh'g, 61 FERC ¶ 61,089 (1992).

discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(F) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in this proceeding in a hearing room of the Commission, 888 First Street, N.E., Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule, including a date for the filing of SWEPCO's case-in-chief prior to the date for the filing of intervenor and trial staff testimony and exhibits. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.